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OAK HARBOR FREIGHT LINES, INC.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 WILLIE L. MITCHELL,)	CASE NO.: 4:07-CV-04388-CW
)	
11 Plaintiff,)	JOINT CASE MANAGEMENT
)	STATEMENT AND PROPOSED
12 v.)	ORDER
)	
13 OAK HARBOR FREIGHT LINES, INC.,)	Date: April 15, 2008
)	Time: 2:00 p.m.
14 Defendant.)	Judge: Honorable Claudia Wilken
)	
)	
)	
)	

17 Plaintiff WILLIE L. MITCHELL ("Plaintiff") and Defendant OAK HARBOR FREIGHT
18 LINES, INC. ("Defendant") hereby jointly submit the following Case Management Statement:¹

19 **1. Jurisdiction and Service**

20 This court has subject matter jurisdiction pursuant to 28 U.S.C. §1331. Plaintiff's First
21 Claim for Relief alleges a violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681

23 ¹ This document contains Defendant's portion of the joint case management conference
24 statement. The parties have settled this case. Defendant anticipates that a stipulation for
25 dismissal will be filed prior to the case management conference. Defendant has encouraged
26 Plaintiff to either file a notice of settlement or execute a stipulation for dismissal in advance of
27 the deadline for this joint case management conference. Defendant has also attempted to meet
28 and confer with Plaintiff on the contents of the joint case management conference statement. On
April 8, 2008, Plaintiff stated that he will sign the Settlement Agreement "soon" and give
Defendant permission to file a Stipulation of Settlement. Accordingly, Defendant submits this
statement unilaterally, in a good faith effort to comply with the court's order pending the filing
of the stipulation for dismissal.

1 *et seq.* The court has supplemental jurisdiction over Plaintiff state law claims pursuant to 28
2 U.S.C. §1367.

3 All parties have been served.

4 **2. Facts**

5 Defendant: From 2000-2004, Plaintiff worked for Defendant as a professional truck
6 driver. Thereafter, Plaintiff sought and obtained truck driving positions with various other
7 companies. Plaintiff alleges that Defendant intentionally provided false and misleading
8 information to Plaintiff's prospective employers about his work record during his employment at
9 Defendant. Specifically, Plaintiff alleges that Defendant falsely reported that Plaintiff: (a) was
10 involved in an accident in April 2004 (in Georgia), and (b) tested positive for marijuana use.
11 Plaintiff further alleges that Defendant's conduct damaged Plaintiff, in the form of lost job
12 opportunities and emotional distress.

13 Defendant denies Plaintiff's allegations. Defendant is not a "consumer reporting agency"
14 subject to the requirements of the Fair Credit Reporting Act, 15 U.S.C. §1681 ("FCRA").
15 Additionally, as a motor carrier operating in interstate commerce, Defendant is obligated to
16 maintain driver qualification and safety records, and to respond to inquiries from prospective
17 employers concerning driver safety performance records. At all times, Defendant has complied
18 with its legal obligations as established the Department of Transportation ("DOT"). Defendant
19 has maintained accurate driver records, and made those records available to prospective employers
20 as specifically mandated by the DOT.

21 **3. Legal Issues**

22 Defendant: Defendant anticipates the following issues will be litigated in this action:

- 23 (1) Whether Plaintiff has stated a claim upon which relief can be granted;
- 24 (2) Whether Defendant is a "consumer reporting agency" within the definition of the
25 FCRA;
- 26 (3) Whether Defendant violated 15 U.S.C. §1681;
- 27 (4) Whether Defendant intentionally subjected Plaintiff to actionable emotional
28 distress;

- 1 (5) Whether Defendant negligently subjected Plaintiff to actionable emotional distress;
- 2 (6) Whether Defendant acted with malice;
- 3 (7) Whether Plaintiff may recover punitive damages from Defendant;
- 4 (8) Whether Plaintiff's claims are barred by the applicable statutes of limitation;
- 5 (9) Whether Defendant is entitled to immunity 49 U.S.C. §508 and the applicable DOT
- 6 regulations.

7 **4. Motions**

8 Defendant States: On January 11, 2008, Defendant notified Plaintiff's counsel that it
 9 intends to file a motion for judgment on the pleadings on the grounds that Plaintiff does not allege
 10 (and cannot in good faith allege) that Defendant is a "consumer reporting agency" subject to the
 11 provisions of the FCRA. Defendant anticipates that Plaintiff will dismiss his FCRA claim.
 12 Because the FCRA is the only basis for federal court jurisdiction, Defendant further anticipates
 13 that Plaintiff will dismiss this action in its entirety.

14 If Plaintiff does not dismiss this action, Defendant will file a motion for judgment on the
 15 pleadings. Defendant has also notified Plaintiff, pursuant to Rule 11 of the Federal Rules of Civil
 16 Procedure ("Rule 11"), that Defendant will file a motion for sanctions against Plaintiff and her
 17 counsel if the FCRA claim is not withdrawn.

18 **5. Amendment of Pleadings**

19 Defendant filed its First Amended Answer on January 10, 2008 to include defenses based
 20 on the privilege provisions of 49 U.S.C. §508 and the applicable DOT regulations, as well as the
 21 express statutory language of the FCRA, 15 U.S.C. §1681. Mr. Mitchell intends to amend his
 22 complaint to include intentional interference with prospective economic advantage and requests
 23 leave to do so up to and including February 15, 2008.

24 **6. Evidence Preservation**

25 Defendant: Defendant has begun the process of gathering evidence, and does not
 26 anticipate any issues with respect to evidence preservation.

27 **7. Disclosures**

28 The deadline for initial disclosures as required by Rule 26 of the Federal Rules of Civil

1 Procedure ("FRCP") was February 15, 2008. Defendant prepared and served timely disclosures.
2 Plaintiff has yet to serve initial disclosures.

3 **8. Discovery**

4 Defendant: Defendant proposes the following discovery plan pursuant to FRCP 26(f):

5 Discovery will be needed on the following subjects: The parties will need to conduct
6 discovery into the facts and evidence normally at issue in this type of action, including all facts
7 and/or evidence that supports, refutes or relates in any way to the allegations of the Complaint.
8 This will include the events alleged in the Complaint, as well as Plaintiff's alleged economic and
9 emotional damages.

10 Discovery does not need to be conducted in phases nor limited to particular issues.

11 Defendant proposes that the number of interrogatories allowed to each party under the
12 Federal Rules of Civil Procedure be expanded to 50.

13 Defendant proposes that the time limit for Plaintiff's deposition under the Federal Rules of
14 Civil Procedure be expanded to permit 2 days of deposition, with a limit of 7 hours for each day of
15 deposition (excluding reasonable breaks during the deposition for lunch and other reasons).

16 **9. Class Actions**

17 Not applicable.

18 **10. Related Cases**

19 None.

20 **11. Relief**

21 Not applicable.

22 **12. Settlement and ADR**

23 Both parties agree on early mediation with a magistrate judge as an ADR option.

24 **13. Consent to Magistrate Judge for all Purposes**

25 The parties do not consent to have a magistrate judge conduct all further proceedings
26 including trial and entry of judgment.

27 **14. Other References**

28 Not applicable.

15. Narrowing of Issues

None.

16. Expedited Schedule

Not applicable.

17. Scheduling

Parties agree to the following schedule:

November 17, 2008: Last Day for Non-Expert Discovery

December 22, 2008: Deadline for Expert Disclosures

January 6, 2009: Last Day to Hear Dispositive Motions

January 16, 2009: Last Day for Expert Discovery

February 17, 2009: Pretrial Conference

February 23, 2009: Trial Date.

18. Trial

Defendant States: Plaintiff has requested a trial by jury. The parties anticipate that trial in this matter will take 4-7 days.

19. Disclosure of Non-party Interested Entities or Persons

Not applicable.

20. Other Matters

None.

Dated: April 8, 2008

THE ISON LAW GROUP

/s/ Elizabeth R. Ison

Elizabeth R. Ison

Attorney for Defendant

OAK HARBOR FREIGHT LINES, INC.